211 CMR 67.00: WORKERS' COMPENSATION SELF-INSURANCE GROUPS

Section

67.01: Purpose, Scope and Applicability

The purpose of 211 CMR 67.00 is to implement the provisions of M.G.L. c. 152, § § 25E through 25U, as amended by St. 1991, c. 398, governing the formation, operation and oversight of workers' compensation self-insurance groups in the Commonwealth. The provisions of 211 CMR 67.00 shall apply to all workers' compensation self-insurance groups.

67.02: Definitions

Actuarially Fully Funded Group: a group for which the funding amount is established at a level sufficient to discharge all obligations incurred pursuant to M.G.L. c. 152 by the members of the group as they become due and payable from time to time, and for which the value of fund assets is at least equal to the present value of ultimate expected incurred claims and claims settlement costs, after giving due consideration to valid and collectible excess insurance or reinsurance. The determination of the sufficiency of the level of funding, including loss reserves, shall be made according to sound actuarial practice, and shall be certified by a qualified actuary.

Administrator: an individual, partnership, corporation or unincorporated association engaged by a workers' compensation self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide daily management of the group.

Administrative Fund Account: The remaining premium, after any payments for reinsurance or excess insurance and after sufficient funds are placed in the Claims Fund Account, placed in a designated depository in the commonwealth for the payment of taxes, general regulatory fees, assessments and administrative costs.

Affiliate: any person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, a specified person.

Certified Financial Statement: a current financial statement of a member, which is either audited or reviewed by an independent Certified Public Accountant, including, at a minimum, a balance sheet, a profit and loss statement, a statement of change in fund position and a statement of the member's net worth and including all notes of the Certified Public Accountant which are an integral part of the financial statement. A reviewed financial statement shall be considered a certified financial statement only if accompanied by the member's federal income tax return for the most recent calendar or fiscal year.

Claims Fund Account: member contributions which are placed in a designated depository in the commonwealth in an amount equal to the estimated aggregate retained workers' compensation claims liability of the group.

Commissioner: the Commissioner of Insurance or his or her designee.

Excess Insurance: excess insurance or reinsurance.

Financial Reinsurance: a form of reinsurance which is not total reimbursement insurance, and which is defined in a Division of Insurance Bulletin.

Fund Year: the fiscal year of a group, which shall consist of 12 calendar months, except for the first year, which may consist of fewer than 12 months.

In-Force Premium: the annualized standard premium of all policies in effect on a given date.

Insolvent or Insolvency: the inability of a workers' compensation self- insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

Member: an employer, as defined in M.G.L. c. 152, § 1, who is a member of a workers' compensation self-insurance group.

Net Premium: standard premium less any advance premium discounts.

Net Worth for Non-Profit Organizations: in the case of a non-profit organization, net worth shall be the aggregate unrestricted fund balance of the non-profit organization as reported in its certified financial statement. The phrase "aggregate unrestricted fund balance" shall mean the amount equal to the unrestricted total assets less the unrestricted total liabilities. Net worth shall be determined in accordance with either generally accepted accounting principles or generally accepted government auditing standards, whichever is appropriate.

Person: an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.

Provable Net Worth: the net worth of a member, supported by certified financial statement(s) of the member.

Public Employer Workers' Compensation Self-Insurance Group: a not-for-profit association consisting of five or more employers, all of whom are public entities, who enter into agreements to pool their liabilities for workers' compensation benefits and employer's liability in the Commonwealth.

Qualified Actuary: a member in good standing of the Casualty Actuarial Society or, a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

Recalculated Distribution Amount: the amount originally available for distribution to members pursuant to 211 CMR 67.08(4) for a fund year, adjusted for any favorable or adverse loss development, less any distributions previously paid for that fund year.

Standard Premium: the premium derived from the manual rates adjusted by any applicable experience modification factors, including the All Risk Adjustment Program (ARAP), and such other experience rating plans the Commissioner may approve, but before advance premium discounts or any large or small deductible credits.

Subsidiary: an affiliate controlled by a person directly or indirectly, through one or more intermediaries.

Total Reimbursement Reinsurance is a form of reinsurance which transfers all underwriting, timing and financial risk to the reinsurer.

Workers' Compensation: when used as a modifier of benefits, liabilities or obligations, shall mean both workers' compensation and employers' liability.

Workers' Compensation Self-Insurance Group or Group: a public employers group or a not-for-profit unincorporated association or a corporation formed under the provisions of M.G.L. c. 180, consisting of five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide industry, trade or professional association which has been in existence for not less than two years, or who are parties to the same or related collective bargaining agreements, and who enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in the Commonwealth.

67.03: General Provisions

(1) A workers' compensation self-insurance group shall not be considered to be an insurance company and shall not be subject to the provisions of M.G.L. c. 175 or any regulations thereunder except as otherwise provided in M.G.L. c. 152 or 211 CMR 67.00.

(2) A workers' compensation self-insurance group shall be subject to all provisions of M.G.L. c. 152 and all regulations promulgated thereunder governing the conduct of insurance companies with respect to the payment of workers' compensation benefits, and shall be subject to all fees, fines, penalties and assessments levied upon insurance companies for failure to comply with the claim procedures of M.G.L. c. 152 and any regulations promulgated thereunder, and shall be considered to be self-insurers for the purposes of M.G.L. c. 176D.

(3) A group shall appoint the Commissioner as its attorney to receive service of legal process issued against it in the commonwealth, in accordance with the provisions of M.G.L. c. 175, § 151, Clause Third. The appointment shall be irrevocable, shall bind any successor in interest and shall remain in effect as long as there remain any obligations or liabilities of the group for workers' compensation benefits.

(4) At least 70% of the members of a group shall be experience rated pursuant to the uniformexperience rating plan filed with and approved by the Commissioner.

(5) No group may have less than $250,000 of annual gross premium nor a combined provable net worth of all its members of less than $1,000,000.

(6) The principal office of the group shall be located in the Commonwealth.

67.04: Corporations and Subsidiaries; Eligibility; Guarantee

A person and its affiliates shall be considered as one entity for the purposes of 211 CMR 67.00, provided that:

(1) such person and each of its affiliates shall comply with all the filing requirements of 211 CMR 67.06 applicable to a member of a group; and

(2) such person has signed as guarantor to ensure payment of claims by its affiliates.

67.05: Certification To Act As A Self-Insurance Group

(1) No person, association, or entity shall act as a workers' compensation self-insurance group unless it has been approved by the Commissioner.

(2) The Commissioner may decline to approve an application for a certificate of approval if the group is unable to demonstrate that it is able to meet all obligations and requirements of M.G.L. c. 152 and 211 CMR 67.00.

(3) On finding that the proposed group has met all requirements of the law and of 211 CMR$67.00, the Commissioner shall issue the group a certificate of approval. Should the Commissioner find that the proposed group does not meet such requirements, he or she shall issue an order denying the group a certificate, setting forth the reasons for the refusal. The certificate of approval shall not become effective until the group notifies the Office of Insurance of the Department of Industrial Accidents of the names and addresses of the members of the group, their policy numbers, and the effective date of such coverage. A group shall notify the Commissioner if the group fails to commence operations within 60 days of approval. Such notification shall be in writing and shall state the reasons therefore. A group shall forfeit its certificate of approval if it fails to commence operations, as constituted in the form approved by the Commissioner, within 90 days of its approval.

(4) In addition to the filing requirements described in 211 CMR 67.06, the following factors, where applicable, shall be considered in determining whether or not the group will be able to meet its obligations:

(a) ratio of net worth to annual self-insured retention;

(b) ratio of current assets to current liabilities;

(c) ratio of debt to net worth;

(d) history of profitability of the members;

(e) organizational structure, risk management programs and loss control programs, including services contracted for by the board of trustees or administrator;

(f) background, experience and financial condition of the administrator;

(g) composition of the board of trustees;

(h) claims history of the members;

(i) source and reliability of financial information;

(j) ratio of net worth to annual premium contribution;

(k) number of employees and payroll data by workers' compensation class code;

(l) ability to meet the financial requirements prescribed in 211 CMR 67.08;

(m) excess insurance coverages and proposed excess insurer;

(n) relationship of self-insured retention and claims history to excess insurance coverages;

(o) amount of the group's security bond or deposit;

(p) guarantee by parent company;

(q) SEC Form 10K or 10Q, where applicable;

(r) reasonableness of administrative and other expenses;

(s) any other factors which may affect the ability of a group to meet its workers' compensation obligations.

67.06: Application for Certificate of Approval

(1) General Provisions.

(a) A proposed workers' compensation self-insurance group shall file with the Commissioner its application for a certificate of approval accompanied by a non-refundable filing fee in the amount of $100.00.

(b) The Commissioner shall evaluate the information provided in the application to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits shall be available on a timely basis.

(c) The Commissioner shall conduct an initial review of each application to determine if it is complete. The Commissioner shall act upon a completed application for a certificate of approval within 90 days.

(d) The group shall immediately notify the Commissioner of any change in the information required to be filed by 211 CMR 67.06.

(e) All information provided by an applicant during the application process shall be given confidential treatment and shall not be subject to subpoena or made public by the Commissioner or any other person, except by the applicant, without the prior written consent of such applicant, unless the Commissioner, after giving the applicant notice and opportunity to be heard, determines that the public interest would be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may consider appropriate. Notwithstanding the foregoing, once an application has been approved by the Commissioner it shall be made available to the public; provided, however, that if a group wishes, it may submit two complete sets of statements, one with all identifying information blacked out or deleted, and the other set complete with all the identifying information, and the group's underwriting guidelines, for inclusion in the financial examination file.

(2) Application; Required Filings.

(a) General Information: the Application for a Certificate of Approval shall be on a form prescribed by the Commissioner and shall include:

1. the name of the group;

2. the address and telephone number of the group's principal office;

3. the date of organization of the group;

4. the name and address of each member of the group;

5. the name, address and date of organization of the industry, trade or professional organization to which all the members of the group belong, or identification of the collective bargaining agreement to which all group members are parties;

6. the types of business in which employers in the proposed group are engaged and an explanation of how they are the same or similar;

7. a listing of the names and addresses of the initial board of trustees and the name and address of the administrator in accordance with the provisions of 211 CMR 67.07.

(b) Additional Documents Required from the Group:

1. a copy of the by-laws of the group;

2. a copy of the articles of association, trust agreement, or articles of organization;

3. a completed and signed application by the administrator to serve as the administrator of the group, on a form prescribed by the Commissioner;

4. a certificate indicating that the Commissioner has been appointed the group's agent for service of legal process as required by 211 CMR 67.03(3);

5. a schedule of all projected administrative expenses for the group in dollar amount and as a percentage of the estimated standard premium for the group;

6. a composite listing of the estimated standard premium and annual net premium to be developed for each member individually and in total for the group amounting to not less than $250,000. The listing shall include and reflect experience modification factors, All Risk Adjustment Program (ARAP) factors, such other rating plan(s) the Commissioner may approve, and any applicable premium discounts. At least 70% of the members of a group shall be experience rated pursuant to the uniform experience rating plan filed with and approved by the Commissioner;

7. a listing of payroll data, by workers' compensation class code, for the combined group and for each member of the group for each of the three preceding years;

8. a confirmation of required specific and aggregate excess insurance or reinsurance, by an insurer licensed, approved or otherwise authorized to transact excess insurance or reinsurance in the commonwealth. Such confirmation shall include a description of the coverages offered, the terms and conditions of the coverages and the expected premium charges for the coverages. The amount and the terms of the specific and aggregate excess insurance or reinsurance shall comply with the requirements of 211 CMR 67.21;

9. a copy of the fidelity bond, binder, or commitment letter from the surety relating to the fidelity bond for the administrator, on a form prescribed or approved by the Commissioner, in an amount not less than the administrator's total annual compensation for all the groups it administers or $1,000,000, whichever is less. If the group submits a binder, or commitment letter, it must submit a copy of the actual bond to the Division of Insurance within 60 days after the group is approved;

10. the proposed underwriting guidelines for the group;

11. a premium payment plan requiring each member to pay the group not less than 25% of the member's estimated annual net premium not later than the initial day of coverage provided by the group. The premium payment plan of a group containing private employers shall also provide that the balance of each member's annual premium be paid in cash within the first eight months of that fund year in monthly or quarterly installments. A public employer group shall establish a premium payment plan acceptable to the Commissioner;

12. a detailed written description of the group's safety and loss prevention program(s);

13. a refund and assessment plan for the group;

14. an actuarial study displaying adequacy of program funding, including loss reserves, prepared and signed by a qualified actuary. The actuarial study shall show that the group is actuarially fully funded, and shall include any and all data, assumptions and other information used to develop such study;

15. a pro forma financial statement for the group's first five years of operation, showing the financial ability of the group to pay the workers' compensation obligations of its members, including any and all assumptions relied upon to develop such statement;

16. for a group containing private employers, a statement showing the combined provable net worth of all members applying for coverage on the inception date of the group. Such combined provable net worth shall be the amount that establishes the financial strength and liquidity of the members and shall be at least one million dollars;

17. for a group containing private employers, a specimen indemnity agreement jointly and severally binding the members of a group to comply with the provisions of 211 CMR 67.00 which shall be executed by the members upon approval of the group by the Commissioner and prior to the commencement of operations. Such indemnity agreement may be included as a provision of the group's membership or participation or similar agreement which each member of a proposed group shall assent to in writing as a prerequisite to membership in the group; provided that the membership, participation or other similar agreement, clearly discloses, as the first provision and in at least ten point type, the member's obligations under the indemnity agreement, including, at a minimum, the provisions of 211 CMR 67.11(3), (4) and (5).

(c) Documents Required of Each Member: for each member of the group, the group shall provide the following:

1. An individual application, including a disclosure form describing the joint and several obligations of the members, a certification that the member has no outstanding workers' compensation obligations, and a description of the group's refund/assessment plan, signed by an officer or other responsible employee of the member, on a form prescribed or approved by the Commissioner;

2. A written explanation by any member with an experience modification greater than 1.25 describing the causes of its high experience modification and outlining remedial measures it has taken and will be taking in the future to lower its modification;

3. Every member of a group containing private employers shall also submit the following documents:

a. a certified or compiled financial statement, subject to the requirements of 211 CMR 67.06(1)(e);

b. a written agreement to pay the group not less than 25% of the member's estimated annual net premium not later than the initial day of coverage afforded by the group.

67.07: Board of Trustees

(1) Each group shall be operated by a board of trustees consisting of at least three persons elected by the members for stated terms of office. At least 2/3 of the trustees of any group containing private employers shall be employees, officers or directors of members. All trustees of public employer groups shall be elected officials or employees of public entities within the commonwealth. No person employed by the administrator of a group, or by any company or organization affiliated with the administrator, shall serve on the board of trustees of any group containing private employers. All trustees shall be residents of the commonwealth or officers of corporations authorized to do business in the Commonwealth.

(2) The board of trustees of each group shall ensure that all compensable claims are paid promptly and shall take all necessary precautions to safeguard the assets of the group, including the following:

(a) maintain responsibility for all monies collected or disbursed by the group and segregate all monies into a claims fund account and an administrative fund account;

(b) designate an administrator to carry out the policies of the board of trustees and to provide day-to-day management of the group. The board shall enter into a written agreement with the administrator, which shall include, but not be limited to, a description of the duties, responsibilities and compensation for the administrator. The written agreement shall be subject to the Commissioner's approval. The group shall demonstrate to the Commissioner's satisfaction, on the administrator's application form required by 211 CMR 67.06(2)(b)3., that any administrator designated by the board of trustees is of good repute, is in sound financial condition and is experienced in the area of workers' compensation claims administration.

(3) Funds not needed for current obligations may be invested by the board of trustees in accordance with the provisions of M.G.L. c. 175, § 63.

(4) The board of trustees shall not:

(a) extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner or lend money to any person, corporation, or organization for any other purpose without obtaining the prior written approval of the Commissioner;

(b) borrow any monies from the group except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior written approval of the Commissioner.

67.08: Financial Standards and Reporting Requirements

(1) General Provisions.

(a) Except as set forth in 211 CMR 67.08(2), and as may otherwise be established by the Commissioner, a group shall follow the statutory accounting practices prescribed by the National Association of Insurance Commissioners for all property and liability insurance companies.

(b) As part of his or her authority to examine groups under M.G.L. c. 152, § 25I, the Commissioner may elect to obtain an independent analysis of a group's reserves, with expenses of such analysis assessed against the group.

(c) After a group has been in operation for three years, so long as a group has continued to meet the requirements of 211 CMR 67.08(2), the Commissioner may grant, upon petition of the group, a reduction of the requirements applicable to the group that are set forth in 211 CMR 67.21 and 67.08(2)(d). In reviewing a group's petition, the Commissioner may consider such financing alternatives or insurance mechanisms proposed by the group. At the expense of the group, the Commissioner may engage such financial, insurance or other experts deemed necessary by the Commissioner to consider a petition submitted by a group in accordance with 211 CMR 67.08.

(d) After a group has been in operation for three years, or January 1, 1995, whichever is later, the Commissioner may, for good cause, require an increase in the requirements applicable to the group that are set forth in 211 CMR 67.21 and 67.08(2)(d). Such a required increase may be appealed to the Commissioner and may be altered or revoked if the Commissioner finds, after notice and a hearing, that there was not good cause to support such an increase.

(2) Minimum Financial Requirements.

(a) Reserves

1. Each group shall establish and maintain actuarially sound loss reserves which shall comply with the standards for an actuarially fully funded group as defined in 211 CMR 67.02. Each group containing private employers shall also establish and maintain appropriate bad debt reserves.

2. A group shall be subject to the National Association of Insurance Commissioners (NAIC) minimum reserve standard for loss and loss adjustment expense (LAE) reserves.

3. A group may elect to record loss reserves on a discounted basis at the rate and in the manner prescribed by the Internal Revenue Service. These discounted reserves shall be fully collateralized, and may be invested according to M.G.L. c. 175, § 63.

(b) Liquidity: any group whose liquid assets are less than the sum of its undiscounted loss reserves and its unearned premium reserve, ignoring any unearned premiums related to premium installments not yet due or any approved retrospective rate credits, shall be required to provide security, in addition to that required under 211 CMR 67.08(2)(d), equal to the difference. The security shall be in the form of:

1. cash, including certificates of deposit, in a designated bank account in a bank that is a member of the Federal Reserve System;

2. short term U.S. Treasury securities;

3. letters of credit meeting NAIC standards and issued by banks that are members of the Federal Reserve System; or,

4. other acceptable means established by the Commissioner in a Division of Insurance Bulletin.

(c) Net Worth:

1. The provable net worth of all the members of the group combined as reflected in their certified financial statements shall at all times be at least $1,000,000, and shall at all times equal at least four times the group's standard premium.

2. At the Commissioner's discretion, up to 25% of the premium of the group may be contributed by members with negative net worth that do not have guarantees from other sources of their ability to pay premiums and assessments. The group shall provide written notice to all members prior to the approval of a new member with negative net worth. In the event an existing member of the group has negative net worth and has no such guarantee, the Board of Trustees, or a committee of the Board of Trustees, shall review the status of the member.

3. Members which do not have certified financial statements shall submit a financial statement compiled by a Certified Public Accountant, including all the same schedules and notes requested above.

4. Any member with compiled financial statements or which either belongs to another workers' compensation self-insurance group in another state or which is a qualified self-insurer in another state, shall be subject to the following limitation: the net worth of such member will not be used in calculating the combined provable net worth of the members of the group, but its premium will be used to calculate the total premium of the group.

5. Any member comprising more than 20% of a group's premium or net worth shall submit complete audited statements, the additional cost of which may be borne by the group.

(d) Security

1. For any group containing private employers, security shall be 10% of the group's standard premium, but in no case shall the security be less than $100,000. The amount of the security deposit or bond shall be adjusted annually by the group based upon changes in the group's in-force premium, as determined from its annual statements; provided, however, that any time a group's in-force premium grows by more than 10%, it shall adjust its security in accordance with 211 CMR 67.11(7).

2. Security shall be provided by either a surety bond or security deposit, or any combination thereof. Any surety bond provided shall be issued by a corporate surety company licensed to transact surety business in the commonwealth, and which is not affiliated with the group's administrator, other surety(ies) for the group, excess insurer(s) or reinsurer(s) for the group, or any member of the group. The bond shall be in a form prescribed or approved by the Commissioner.

3. Any security deposit provided shall be in the form of bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof, or certificates of deposit which meet the standards imposed by the NAIC, in a bank which is a member of the Federal Reserve System, or any bond or security issued by a state of the United States of America and backed by its full faith and credit. Any securities or certificates of deposit shall have a remaining maturity of one year or less from their time of purchase.

4. The surety bond or security deposit, or both, shall be for the benefit of the Commonwealth solely to pay claims and associated expenses and payable on the failure of the group to pay the workers' compensation benefits which it is legally obligated to pay. If the group has a fund deficit that has not been cured within 90 days of the date the group becomes aware of its existence, the group shall notify the surety and the Commissioner of the fund deficit immediately.

(3) Financial Reporting Requirements. A group shall submit to the Commissioner the following financial reports:

(a) Annual and quarterly statements on the forms prescribed by the National Association of Insurance Commissioners (NAIC) for property and casualty insurers, in accordance with the Commissioner's annual statement instructions and all applicable laws and regulations. The annual statement shall be accompanied by an opinion on loss reserves certified by a qualified actuary and shall demonstrate the group's compliance with the minimum financial requirements set forth in 211 CMR 67.08(2). Reports shall be submitted on the following schedule:

Annual Statement: due on or before the first day of the third month following the end of the group's fund year.

Quarterly Statements: due on or before the 45th day following the end of the group's first, second, and third fiscal quarters.

(b) On or before the last day of the sixth month following the end of the group's fund year, a statement of financial condition audited by an independent Certified Public Accountant, including, but not limited to, actuarially fully funded reserves, for known claims and claim adjustment expenses, unearned premiums, including both direct and reinsurance, and bad debts. Audits shall be subject to the provisions of 211 CMR 23.00.

(c) The Commissioner may prescribe the form and frequency of other reports which may include, but not be limited to, payroll audit reports, summary loss reports and other financial statements.

(4) Distributions to Members. If actuarially sound, a group may declare and accrue dividend liabilities, retrospective rate credits, or similar distributions, from a fund year's operating activities during that fund year, but it shall not begin distributions for that fund year until at least 24 months after the end of the fund year. No distribution, other than dividends, shall be made without the prior approval of the Commissioner. Groups shall make distributions in accordance with the following schedule:

First year (24 months after end of fund year): up to 25% of the calculated distribution amount.

Second Year (36 months after end of fund year): up to 33% of the recalculated distribution amount.

Third Year (48 months after end of fund year): up to 50% of the recalculated distribution amount.

Fourth Year and ensuing years (from 60 months after end of fund year): up to 100% of the recalculated distribution amount.

Each member shall be given a written description of the group's refund/assessment plan at the time of application for membership. A refund for any fund year shall be paid only to those employers who remain participants in the group for the entire fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

(5) Remedial Procedures. In the event that the annual reserve report, required under 211 CMR 67.08(3)(a), shows that a group has not satisfied the minimum financial requirements prescribed in 211 CMR 67.08(2), the group shall submit a written plan to the Commissioner, at the same time as it submits the annual reserve report, describing what steps the group intends to take to bring the group into compliance promptly.

(6) Failure of a group to make timely submissions of required reports shall be punishable by a fine of $100 per day per report until the reports are filed, as provided in M.G.L. c. 152, § 25S.

67.09: Uniform Classification System; Premium Contributions; Application To Make Own Rates; Audits

(1) Every group shall comply with the uniform classification system, uniform experience rating plan, including the All Risk Adjustment Program (ARAP), other experience rating plans the Commissioner may approve, and manual rules filed with the Commissioner by an advisory organization designated by the Commissioner.

(2) Experience modifications for members shall be calculated, at the expense of the group, by an organization designated by the Commissioner, and shall be used by all groups. Members changing from one group to another, or returning to the insured workers' compensation market shall carry their experience modifications with them. The Commissioner shall develop a plan and schedule for implementing 211 CMR 67.09(2).

(3) Premium contributions to a group shall be determined by applying the manual rates and rules to the appropriate classification of each member and adjusting the premium by each member's experience credit or debit. Subject to approval by the Commissioner, premium contributions may also be reduced by an advance premium discount reflecting the group's expense levels and loss experience.

(4) A group may apply to the Commissioner for authority to make its own rates. Such rates shall be filed with the Commissioner and shall be based upon at least two fund years, consisting of not less than 24 months, of the group's experience, to the extent actuarially credible. A public employer safety group in operation for at least two consecutive years before it applies for approval to operate as a public employer group, may apply to the Commissioner to make its own rates immediately. In no event shall a group determine members' premium contributions by any method other than that prescribed herein without the prior written approval of the Commissioner. In no event shall a group make a distribution to its members, other than dividends, without the prior written approval of the Commissioner.

(5) Each group shall be audited at least annually by an independent auditor, selected and compensated by the group, and subject to the approval of the Commissioner, to verify proper classifications, experience rating, payroll and rates. A report of the audit shall be filed with the Commissioner on or before the last day of the sixth month following the end of the group's fund year in a form acceptable to him or her. The group or any member may request a hearing on any objections to the classifications. If the audit shows that, as a result of an improper classification, a member's premium contribution is insufficient, the group shall assess that member an amount equal to the deficiency. If the audit shows that as a result of an improper classification a member's premium contribution is excessive, the group shall refund to the member the excess collected.

67.10: Reinsurance; Security Bond or Deposit; Fidelity Bond; Changes

To maintain its certificate of approval, a group shall comply with the requirements of M.G.L. c. 152, 211 CMR 67.00, and any other applicable laws or regulations, and the following:

(1) Each group containing private employers shall maintain a combined provable net worth as prescribed in 211 CMR 67.08(2)(c), but not less than $1,000,000;

(2) Each group containing private employers shall maintain a security bond or deposit in an amount and form as prescribed in 211 CMR 67.08(2)(d), but not less than $100,000.

(3) Each group shall maintain specific and aggregate excess insurance or reinsurance in an amount and form as prescribed in 211 CMR 67.21.

(4) Each group's administrator shall maintain a fidelity bond in a form and amount as prescribed by 211 CMR 67.06(2)(b)9.

(5) Each group shall notify the Commissioner of any change in the manner of its compliance with 211 CMR 67.10(1), (2), (3) and (4) no later than 20 days after such change, including, but not limited to, cancellation, nonrenewal or change in amount and terms of coverage of any excess insurance, security bond or deposit or fidelity bond.

67.11: New Members; Cancellation of Members; Insolvency or Bankruptcy of Members; Changes in Premium

(1) An employer seeking to join a group after the group has been issued a certificate of authority shall submit an application for membership, pursuant to 211 CMR 67.06(2)(c)1. to the board of trustees, or its administrator, if so authorized by the board under 211 CMR 67.07(2)(b), and, unless the employer is a public employer, enter into the indemnity agreement required by 211 CMR 67.06(2)(c)3.b.. Membership shall take place no earlier than the board's or the administrator's approval of such employer for membership in the group. If the administrator is permitted to approve members, such membership shall terminate at the next meeting of the board of trustees, unless ratified by the board, and recorded in the minutes. The application for membership and its approval shall be maintained as permanent records of the board of trustees. The administrator shall notify the Office of Insurance of the Department of Industrial Accidents within five business days of the name and address of the new member of the group, including in its notification the member's policy number.

(2) Individual members of the group shall be subject to cancellation by the group pursuant to the by-laws of the group. In addition, individual members may elect to terminate their participation in the group in accordance with such by-laws. The group shall notify the Commissioner and the Office of Insurance of the Department of Industrial Accidents of the termination or cancellation of a member within ten days and shall maintain coverage of each canceled or terminated member for 30 days after receipt of such notice, with the canceled or terminated member responsible for the premium for such period, unless the group is notified sooner that the canceled or terminated member has procured workers' compensation insurance, has become a self-insurer, or has become a member of another group.

(3) The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member of a group containing private employers, which elects to terminate its membership or is canceled by the group, shall remain jointly and severally liable for the workers' compensation obligations of the group and its members which were incurred during its period of membership.

(4) A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

(5) For a group containing private employers, the dissolution, insolvency or bankruptcy of a member shall not relieve the group or any member of the group of liability for the payment of workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

(6) Whenever, as the result of the addition of new members, including affiliates of existing members, the in-force premium of the group shall grow by more than ten percent, the board of trustees shall submit to the Commissioner a list of the new members or additional affiliates of existing members, along with payroll data, estimated annual premium, and an interim report of the total in-force premium of the entire group. To determine whether or not the in-force premium has increased by 10%, the group shall compare the revised in-force premium with the in-force premium on the first day of the fund year, and when a later report is filed in accordance with 211 CMR 67.08(3)(a), with such later report. Any new member shall meet the eligibility standards prescribed in 211 CMR 67.06. A group shall have a continuing obligation to meet the minimum financial standards prescribed in 211 CMR 67.08.

(7) The group shall adjust its excess insurance or reinsurance coverage and security deposit or bond and fidelity bond as a result of such 10% or greater change in premium or payroll in accordance with the provisions of 211 CMR 67.21(3), 67.08(2)(d), and 67.06(2)(b)9. The Commissioner may require the group to make other changes as he or she considers appropriate to ensure that the group is able to meet its workers' compensation obligations.

67.12: Merger of Groups

(1) Subject to the prior written approval of the Commissioner, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. A public employer group may merge only with another public employer group.

(2) The resulting group may be a continuing group under the name of one or more of the merged groups or a new group whose name shall be subject to the Commissioner's approval. Groups merging under 211 CMR 67.12 shall enter into a written agreement for such merger prescribing its terms and conditions. In all respects, the continuing group or the new group shall be subject to the provisions of 211 CMR 67.00.

Such agreement shall be:

(a) assented to by a majority of the members and the Board of Trustees of each group;

(b) executed in duplicate by a majority of the board of each group;

(c) accompanied by copies of the resolutions authorizing the merger and the execution of the agreement attested by the recording officer of each group; and

(d) submitted to the Commissioner, with the records of the companies pertaining thereto.

(e) approved, in writing, by the Commissioner;

(3) The Commissioner may hold a hearing on the merger and shall do so if any party, including a member of either group, so requests.

(4) If it appears that the requirements of 211 CMR 67.12(1), and (2) have been complied with, the Commissioner may certify and approve the agreement by signing it. One of the copies of the agreement shall be filed with the state secretary, who shall record the agreement, and issue a new certificate to the merged group with the powers retained and specified in the agreement. The other copy shall be retained by the Commissioner.

(5) No such agreement shall take effect until it has been filed in the Office of the State Secretary. Upon merger all rights and properties of the several groups shall accrue to and become the property of the merged group which shall succeed to all the obligations and liabilities of the merged groups, in the same manner as if they had been incurred or contracted by it. The members of the merged groups shall continue to be subject to all the liabilities, claims and demands existing against them at or before such merger.

(6) No action or proceeding pending at the time of the merger in which any or all the groups merged may be a party shall abate or be discontinued by reason of the merger, but the same may be prosecuted to final judgment in the same manner as if the merger had not taken place, or the continuing group or the new group may be substituted in place of any group so merged by order of the court in which the action or proceeding may be pending.

(7) Members of either merging group who do not wish to belong to the merged group may terminate their membership at the time of the merger without penalty. They will remain liable for any assessments related to the period of their membership.

67.13: Solicitation of Membership by Licensed Insurance Producers

Except for the trustees, officers, directors or salaried employees of a group or its administrator, any person soliciting membership in a workers' compensation self-insurance group shall be a licensed Insurance Producer as provided by M.G.L. c. 175, § 162I.

67.14: Deficiencies; Assessments; Liquidation of Groups

(1) Every group's Application and Indemnity Agreement shall contain provisions providing for the following:

(a) in the event that a group incurs a fund deficit in any fund year, such deficit shall be made up immediately with surplus from a prior fund year or administrative funds, or the members of the group shall be subject to automatic assessment without further action by the group;

(b) in the event a member fails to pay any premium, assessment, or other contribution to the group when due, the members of the group shall be subject to automatic assessment without further action by the group.

(2) If the group fails to assess its members within 30 days of the time it has knowledge of the deficiency, the Commissioner shall order it to do so. The group shall be presumed to have knowledge of the deficiency on the date it is due to file its certified opinion on loss reserves.

(3) If the group fails to make the required assessment of its members within 30 days after the Commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, then, after such longer period of time as may be specified by the Commissioner, the group shall be deemed to be insolvent.

(4) The Commissioner shall proceed against an insolvent group in the same manner as the Commissioner would proceed against an insolvent domestic insurer pursuant to M.G.L. c. 175, § 6. The Commissioner shall have the same powers and limitations in such proceedings as are provided under M.G.L. c. 175, § 6, except as otherwise provided under M.G.L. c. 152.

(5) In the event of the liquidation of a group, the Commissioner shall levy an assessment on its members for such an amount as he or she determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

67.15: Examination of Affairs, Transactions, Accounts, Records and Assets of Each Group

The Commissioner shall examine the affairs, transactions, accounts, records and assets of each group and of the administrator of each group as often as the Commissioner considers advisable, but not less often than once every three years. The expense of such examinations shall be assessed against the group in the same amount and manner that insurers are assessed for examinations, pursuant to the provisions of M.G.L. c. 175, § 4 and M.G.L. c. 7, § 3B.

The Commissioner or his or her designee shall have free access to all the assets of the group for the purpose of verification and to all the books and papers relating to its business and to the books and papers of its representatives. The Commissioner or his or her designee may summon and examine under oath any person who, he or she believes, has knowledge of the affairs, transactions or circumstances being examined or investigated, and whoever without justifiable cause neglects upon due summons to appear and testify before the Commissioner or his or her authorized representative, and whoever obstructs the Commissioner or the representative in making examinations or investigations hereunder, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year.

67.16: Termination of Certificate

(1) The certificate of approval issued by the Commissioner to a workers' compensation self-insurance group authorizes the group to provide workers' compensation coverage for members of the group. The certificate of approval remains in effect until terminated at the request of the group or revoked by the Commissioner pursuant to the provisions of 211 CMR 67.17. Termination of the certificate shall not relieve either the group or its members of their duty to pay workers' compensation benefits, nor shall it relieve members of their joint and several liability to pay for claims incurred by the group during their period of membership.

(2) The Commissioner shall grant the request of any group to terminate its certificate of approval provided the group has insured or reinsured all outstanding, both known and unknown, workers' compensation obligations with a licensed insurer under an agreement filed with and approved in writing by the Commissioner. Such obligations shall include both known and unknown claims and the expenses associated therewith.

67.17: Revocation of Certificates of Approval

(1) After notice and opportunity for a hearing, the Commissioner may revoke a group's certificate of approval if the group:

(a) is found to be insolvent;

(b) fails to pay any regulatory fee, assessment, or special fund or trust fund contribution imposed on it under M.G.L. c. 152, § 65;

(c) fails to comply with any of the applicable provisions of 211 CMR 67.00, M.G.L. c. 152, with any other applicable law or regulation, or with any lawful order of the Commissioner.

(2) The Commissioner may revoke a group's certificate of approval in accordance with the provisions of M.G.L. c. 175, § 5 if the Commissioner finds that:

(a) any certificate of approval that was issued to the group was obtained by fraud;

(b) there was a material misrepresentation in the application for the certificate of approval; or

(c) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over on proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator in its fiduciary capacities.

67.18: Misrepresentations or Omissions in Solicitations of Membership

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership of a group. The Commissioner may take any appropriate action to enforce the provisions of 211 CMR 67.18.

67.19: Affiliation of Administrators, Reinsurers, and Claims Administrators, and Other Service Providers

If the administrator or one of its affiliates wishes to provide reinsurance, excess insurance or actuarial services to a group, it shall use an independent third party to obtain at least two quotes from unaffiliated persons for those services. The third party shall present the two quotes, along with the quote from the administrator's affiliate, directly to the Board of Trustees, and the Board shall choose which one to accept. The choice shall be solely at the discretion of the Board and need not be the lowest bid. Actuarial contracts with such affiliates shall be bid at least once every three years, and reinsurance contracts with such affiliates shall be bid annually.

67.20: Additional Provision Related To Existing Groups

The security, net worth to premium, and reinsurance/excess insurance requirements, prescribed in 211 CMR 67.08(2)(d), and (2)(c) and 211 CMR 67.21, respectively, shall not apply to groups approved prior to January 1, 1993 until the later of the following dates, regardless of whether the group is in the middle of a fund year on such later date:

(1) January 1, 1995 or,

(2) the third anniversary of the date on which the group received its certificate of approval.

67.21: Reinsurance and Excess Insurance Contract Provisions

(1) Specific Excess Coverage Limit for each group shall be at least $5,000,000 per occurrence (per claim for disease). Groups composed of businesses with a high risk of multiple injury from a single occurrence may be required to maintain higher limits.

(2) Retention: the retention allowed for a group's specific excess policy shall be actuarially sound and shall be not more than 30% of the net premium of the group up to a maximum of $500,000. The maximum retention may be revisited after groups have been in operation for three years.

(3) Aggregate Excess Insurance shall attach at 105% of standard premium, and groups may choose their aggregate limit from the following two options:

Option A: An amount not less than 50% of the group's in-force premium of which the first $1,000,000 of this aggregate reinsurance coverage must be total reimbursement reinsurance and the remainder may be total reimbursement reinsurance or financial reinsurance.

Option B: An amount of not less than ten times the specific retention, all of which shall be total reimbursement insurance. Groups with in-force premium in excess of $15,000,000, shall obtain additional reinsurance, which may be financial reinsurance, in the amount of 50% of the in-force premium in excess of $15,000,000.

The aggregate excess insurance or reinsurance requirements may be revisited after groups have been in operation for three years.

(4) No more than one group shall be covered by any contract or policy of excess insurance or reinsurance and the named insured shall be the group or its statutory successor in interest.

(5) Except as otherwise provided herein, reinsurers and excess insurers shall be subject to the Commissioner's approval, and shall meet all of the following criteria:

(a) They shall be licensed, admitted or otherwise authorized to transact insurance or reinsurance business in the Commonwealth; and,

(b) They shall be classed, according to the following table, in either the top two categories by one of the rating agencies, or receive at least the minimum acceptable rating from two of the rating agencies shown below:

	Top Two Categories	Minimum Acceptable Rating
A. M. Best & Company	A++	A+ A-
Duff & Phelps	AAA,	AA+ AA
Moody's Investors Services	AAA,	AA1 AA2
Standard & Poor Corporation	AAA,	AA A

(c) The NLC Mutual Insurance Company, an affiliate of the National League of Cities, and the Underwriters at Lloyd's of London are specifically approved for reinsurance, provided their policies comply with 211 CMR 67.21(7).

(6) No contract or policy of specific or aggregate excess insurance or reinsurance shall be recognized by the Commissioner in considering the ability of the group to fulfill its financial obligations unless such contract or policy shall contain the following statement:

"This policy [contract] is in compliance with all the provisions of 211 CMR 67.21(7). Provisions at variance with 211 CMR 67.21(7) will be automatically amended to comply with that regulation."

(7) The policy or contract shall be subject to the following provisions, whether included or not:

(a) Cancellation: the policy or contract shall not be cancelable except upon at least 60 days written notice by registered or certified mail to the other party to the policy or contract and to the Commissioner;

(b) Renewal: the policy or contract is automatically renewable at the expiration of the contract or policy period unless written notice of intent not to renew is given at least 60 days prior to such expiration by the party desiring to cancel or non-renew the policy or contract by registered or certified mail to the other party to the policy or contract and to the Commissioner;

(c) Claim Handling: the excess carrier or reinsurer agrees to be subject to the claims handling standards of M.G.L. chs. 152 and 176D and any rules or regulations promulgated thereunder.

(d) Insolvency Clause: the bankruptcy or insolvency of the group will not relieve the excess insurer(s) or reinsurer(s) of their duties and liabilities under the policy.

(e) Default by the Group: the excess carrier or reinsurer will, in the event of the default of the group, continue to provide information and services with respect to its obligations under the contract or policy to any service agent appointed by a receiver.

(f) Intermediary Clause: if the reinsurance contract is negotiated through an intermediary all payments by the group to the intermediary shall be deemed to be payments to the reinsurer; provided, however, that all payments by the reinsurer to the intermediary shall be deemed to be payments to the group only to the extent that they are actually received by the group.

(g) Offset Clause: the policy or contract may contain a provision permitting offset of any balances, whether on account, premiums, commissions, claims, losses, loss adjustment expenses, salvage, or any other amounts due from one party to the other under the agreement; provided, however, that in the event of liquidation or insolvency, the right of offset shall be limited to offset within the particular policy year or contract year.

(h) Sunset Clauses are permitted only for approved financial reinsurance products referred to in 211 CMR 67.21(8). The excess policy or reinsurance contract shall be concurrent with the underlying workers' compensation certificates issued by the group. Clauses requiring the group to report all claims by a certain date and eliminating a reinsurer's or excess insurer's liability for claims not reported by that date, or clauses which force a commutation of losses as of a certain date are not permitted. All reinsurance shall cover all claims arising during the term of the contract on an occurrence basis.

(8) Finite Risk or Financial Reinsurance is permitted only for that portion of the aggregate excess coverage specified in 211 CMR 67.21(3). Loss portfolio transfers, time and distance contracts, and all other methods of transferring investment or timing risk alone are excluded. Approved financial reinsurance products will be described in Division of Insurance Bulletins.

67.22: Cease and Desist Orders

After notice and opportunity for hearing, the Commissioner may issue an orderrequiring a person or group to stop engaging in an act or practice found to be in violation of any provision of 211 CMR 67.00, M.G.L. c. 152, or any other applicable law or regulation.

Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the Commissioner may impose a monetary penalty of not more than $10,000 for each act or violation of such order, not to exceed an aggregate monetary penalty of $100,000, and may revoke the group's certificate of approval.

67.23: Penalties

After notice and opportunity for a hearing, the Commissioner may impose a monetary penalty on any person or group found to be in violation of any of the provisions of 211 CMR 67.00, M.G.L. c. 152, or any other applicable law or regulation. The monetary penalty shall not exceed $1,000 for each act or violation, not to exceed an aggregate monetary penalty of $10,000. The amount of any such monetary penalty shall be paid to the Commissioner for the use of the department of insurance. Such penalty shall be in addition to any other penalty provided by law.

67.24: Standards for Compliance

The Commissioner shall develop standards governing the use of discretion by the Commissioner in applying the provisions of 211 CMR 67.00.

67.90: Severability

If any section or portion of a section of 211 CMR 67.00 or the applicability thereof to any person, entity or circumstance is held invalid by a court, the remainder of 211 CMR 67.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.